

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121845-001

Companion Life Insurance Company

Respondent

Issued and entered
this 31ST day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 13, 2011, attorney XXXXX, on behalf of his client XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation, under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner accepted the case for review on June 21, 2011.

The Petitioner receives benefits under a group policy underwritten by Companion Life Insurance Company (Companion Life). The Commissioner notified Companion Life of the external review and requested the information used in making its adverse determination. The Commissioner received Companion Life's response on June 22, 2011.

This case can be resolved by applying the terms of the policy and applicable state law. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

On August 13, 2010, the Petitioner was seriously injured during an altercation in which he suffered a fractured skull, internal bleeding, damage to his teeth, and broken bridgework as a result of falling on the pavement after being knocked unconscious. The Petitioner was taken to the emergency room of XXXXX Medical Center. He was admitted as an inpatient for treatment of traumatic head/brain injury and internal bleeding. He remained hospitalized until August 20, 2010.

Companion Life denied coverage for the Petitioner's treatment citing a policy provision that excludes coverage for injuries sustained while engaged in illegal conduct. The Petitioner appealed Companion Life's denial through its internal grievance process. Companion Life upheld its decision and issued its final adverse determination on April 15, 2011.

III. ISSUE

Did Companion correctly deny coverage for the Petitioner's August 2010 hospitalization and related care?

IV. ANALYSIS

Petitioner's Argument

In a letter to the insurer dated March 24, 2011, the Petitioner wrote:

I have received your letter denying my claim for insurance coverage and wish to appeal the decision that my claims are not covered due exclusion #15 of my policy. I in fact did not commit or attempt to commit an assault or felony. The police report that is being relied upon to apply the exclusion contains only the statements of . . . the person who attacked me and caused my injuries, and the people who were with him.

I have not been charged with any kind of felony or assault, but am currently awaiting a trial to prove I am not guilty of the alleged misdemeanor property damage. My trial is not scheduled to be heard until mid-May 2011 and I hope that justice is served and that the charges will be dismissed. Even if I am convicted the offense is simply causing damage to a car door which is not the same as an assault or a person at all.

What actually happened is that prior to being punched and suffering a fractured skull from falling on the pavement I remember getting into the front passenger seat of my car. [The person who assaulted me] and the people he was with got into the car to my right and banged their car door into mine real hard. I got out of the car to complain and that is basically all I remember because I was immediately punched and lost consciousness before my daughter could even get out of the car to see what was happening. I am certain I was wrongfully attacked and I intend on pursuing claims against at least [my attacker] for the injuries he caused to me.

* * *

I am certain that the XXXXX County Prosecutor's office would have charged me with assault or attempted assault if they felt there was any real supporting evidence.

In light of these facts and the language of the policy I request an appeal of the decision to deny my claim for coverage of medical expenses related to this injury which was caused by being assaulted . . .

Respondent's Argument

The complete text of the Respondent's April 15, 2011, final adverse determination appears below:

Your appeal to the denied charges in relation to your injuries of 8/13/2010 has been reviewed by Companion Life Insurance Company.

The determination is to uphold the original denial of the claim due to exclusion #15 of the health care plan. This determination was based on the information documented in the police report.

You have the right to request an external appeal under the plan with the Office of Financial & Insurance Services [sic]. Copies of the forms and the procedures are enclosed for you [sic] use if you decide to pursue.

Commissioner's Review

The exclusion cited in the Respondent's final adverse determination appears of page 36 of the Petitioner's policy:

Exclusions and Limitations Applicable to All Benefits

* * *

15. Any Disability resulting from or sustained as a result to [sic] being engaged in an illegal occupation or the commission or attempted commission of an assault or felonious act.

Section 3452 of the Michigan Insurance Code, MCL 500.3452, regulates insurance policy provisions which exclude coverage for illegal or improper conduct by an insured:

There may be a provision as follows:

ILLEGAL OCCUPATION: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

No similar provision less favorable to an insured may be included in a policy of disability insurance. (See MCL 500.3430 and 500.3468.)

The coverage exclusion which appears in Petitioner's policy is significantly less favorable to the insured than the provision permitted by section 3452. Companion Life's provision would exclude coverage whenever an insured was engaged in illegal conduct, whether or not the conduct was felonious.

By enacting section 3452, the Michigan legislature has chosen to narrowly define the circumstances in which an insurer may deny coverage based on the conduct of the insured. Such exclusions may be invoked to deny coverage only where an insured is committing or attempting to commit a felony or is engaged in an illegal occupation. The policy provision in the present case goes well beyond the limits of section 3452. The policy exclusion is inconsistent with existing Michigan law and may not be employed to deny coverage.

The Commissioner finds Companion Life's exclusion is prohibited and may not be used to exclude Petitioner's treatment from coverage under his policy.

V. ORDER

The Commissioner reverses Companion Life Insurance Company's final adverse determination of April 15, 2011. Companion Life shall provide coverage for the medical care the Petitioner received for the injuries he sustained on August 13, 2010, subject to any applicable deductibles and copayments. Coverage shall be affected within 60 days of the date of this Order. Companion Life shall, within seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

To enforce this Order, the Petitioner may report any complaint regarding the implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.